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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,001	03/12/2004	Bernd Schmandt	LLP113US	7567
51092 7590 09/25/2009 ESCHWEILER & ASSOCIATES LLC 629 EUCLID AVENUE, SUITE 1000 NATIONAL CITY BUILDING CLEVELAND, OH 44114				
EXAMINER FLORES, LEON				
ART UNIT 2611		PAPER NUMBER		
NOTIFICATION DATE 09/25/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing@eschweilerlaw.com

Office Action Summary

Application No.

10/799,001

Applicant(s)

SCHMANDT ET AL.

Examiner

LEON FLORES

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,6-10 and 13-17 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,5,11,12,18 and 19 is/are allowed.
- 6) ☒ Claim(s) 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-083)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 6/15/2009 have been fully considered but they are not persuasive.

REJECTION OF CLAIMS 1, 4-5, AND 18-20 UNDER 35 U.S.C. § 101

Applicant asserts that *"Under 35 U.S.C. 101, "[a] claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." In re Bilski, 545 F.3d 943 (Fed. Cir. 2008). As amended, claims 1 and 20 properly satisfy the first prong of this test and therefore the claims are a properly claimed process. More particularly, the methods of claims 1 and 20 were amended to tie the claimed processes to a wireless communication system. Accordingly, withdrawal of the rejection for these claims and dependent claims is respectfully requested"*.

The examiner agrees.

REJECTION OF CLAIMS 1, 4-7, 11-13, AND 18-19 UNDER 35 U.S.C. § 103(a)

Applicant's arguments with respect to the present rejection are persuasive. Therefore, claims 1, 4-7, 11-13, and 18-19 are allowable over the prior art. However, applicant's arguments with respect to claim 20 are not persuasive for the following reason:

Applicant further asserts that "*Knuth et al do not suggest setting a counter to a maximum count each time an erroneous transmission on a frequency channel is identified since such a modification would frustrate the purpose of their invention*".

The examiner respectfully disagrees. The reference of Knuth does suggest setting the counter to the maximum count each time an erroneous transmission on the frequency channel is identified. (See col. 8, lines 5-20 "the channel quality pointer CQ-ptr is a pointer to the CQ counter of the channels" "the cumulative value for the counter of that channel has reached a maximum count value" "if it has, it means that the channel has been experiencing interference") As you can see, every time a channel is identified to be bad the counter value is at maximum value.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Batra (US Publication 2003/0147453 A1) in view of Knuth et al. (hereinafter Knuth) (US Patent 5,418,839)

Re claim 20, Batra discloses a method for selecting frequency channels associated with a frequency hopping sequence, comprising: characterizing a frequency channel of the frequency hopping sequence by incrementing a counter when an erroneous transmission on the frequency channel is identified and decrementing the counter when an error-free transmission on the frequency channel is identified (See ¶ 29); selectively eliminating the frequency channel from the frequency hopping sequence based on whether the counter exceeds a maximum count (See ¶ 29); decrementing the counter when an error free transmission on the eliminated frequency channel is identified (See ¶ 29)

But the reference of Batra fails to explicitly teach characterizing an eliminated frequency channel by setting the counter to the maximum count each time an erroneous transmission on the eliminated frequency channel is identified and selectively reinserting the eliminated frequency channel into the frequency hopping sequence based on whether the counter has reached a minimum count.

However, Knuth does. (See col. 8, lines 4-29) Knuth suggests characterizing an eliminated frequency channel by setting the counter to the maximum count when an erroneous transmission on the eliminated frequency channel is identified ("maximum count value" "channel experiencing interference") and selectively reinserting the

eliminated frequency channel into the frequency hopping sequence based on whether the counter has reached a minimum count. ("value is zero" "channel is clear")

Therefore, taking the combined teaching of Gan and Knuth as a whole, it would have been obvious to one of ordinary skills in the art to incorporate these features into the system of Gan, in the manner as claimed and as taught by Knuth, for the benefit of determining interference in a channel.

Allowable Subject Matter

5. Claims (1, 4-5, 11-12, 18-19) are allowed.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEON FLORES whose telephone number is (571)270-1201. The examiner can normally be reached on Mon-Fri 7-5pm Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Payne can be reached on 571-272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. F./
Examiner, Art Unit 2611
September 18, 2009

/David C. Payne/
Supervisory Patent Examiner, Art Unit 2611